

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Devices Designed for Playing Audio and	)	
Video Media: Implementation of the	)	Docket No. 12-108
Twenty-First Century Communications and	)	
Video Accessibility Act	)	
	)	

**PETITION FOR LIMITED WAIVER OF HONDA MOTOR CO., LTD. FILED  
ON BEHALF OF ALL ITS AFFILIATES AND SUBSIDIARIES**

**I. Introduction and Relief Sought**

Honda Motor Co., Ltd. is an automaker headquartered in Tokyo, Japan with U.S. subsidiaries, including American Honda Motor Co., Inc., comprising its Sales, R&D, and Manufacturing operations primarily in Ohio, California, Indiana, Alabama, North Carolina, South Carolina, Colorado, and Georgia (collectively “Honda”). In fact, Honda has the longest sustained U.S. manufacturing presence of any international automaker. Since its inception, Honda’s goal has never changed: create a safer, smarter world in which people experience the joy of mobility. Inspired by Soichiro Honda’s belief that “...philosophy without action is worthless[.]” Honda strives to earn the trust and support of the many diverse communities Honda happily serves, always remembering that its customer is the one in the driver’s seat on the way to a better world.

Consistent with that philosophy, Honda strives to make sure its automobiles are accessible to all its customers. For example, Honda’s Customer Mobility Assistance Program supports the mobility needs of drivers and passengers with physical disabilities by providing a reimbursement of up to \$1,000 to each eligible, original retail customer for expenses incurred to purchase and install adaptive equipment on Honda vehicles.

In furtherance of this accessibility objective, Honda requests that the Commission grant a limited waiver of the requirements of Section 204 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“Act”), to the extent that section may apply to the “rear entertainment systems” (“RES”) on certain Honda vehicles. Honda fully intends to offer RES options that achieve the functionality sought by the Act, and Honda appreciates the goal of the Act, “to ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.” 78 FR 77210, 77213 at ¶10. As to the goals of Section 204 specifically, Honda is wholly supportive of this effort to extend consumer functionality to the visually impaired and blind.

Until very recently, Honda was not aware of Section 204’s potential impact on automobile manufacturers. Even when Honda became aware of Section 204’s potential impact on automobile manufacturers, it was unclear how it would address Section 204’s requirements (or whether such actions were feasible) due to the apparent lack of RES hardware and software that could provide full Section 204 functionality. Due to these uncertainties, Honda respectfully seeks a 20-month limited waiver (to the extent necessary) for any vehicle identified below that is manufactured during the waiver period.

Specifically, Honda requests a waiver for the following Honda vehicles, collectively known as the “Subject Vehicles”:

- (1) Honda Odyssey Model Years (MY) 2017, 2019, and 2019;
- (2) Honda Pilot MYs 2017, 2018 and 2019; and
- (3) Acura MDX MYs 2017, 2018 and 2019. (*Note: Acura is a luxury brand designed and manufactured by Honda.*)

## Subject Vehicles Development and Production Cycles

Model	Model Year	Development of Vehicle's RES	Production Cycle (Beginning – End)
Odyssey	2017	Began Aprx. 2008	December 2012 – April 2017
Odyssey	2018-2019	Began mid 2013	March/April 2017 – for an approximate 6 year cycle.
Pilot	2017-2019	Began Fall 2012	Currently in year 2 of an approximate 6 year cycle.
Acura MDX	2017-2019	Began Early 2009	Currently in year 3 of an approximate 6 year cycle.

The scope of the requested waiver is as follows:

- (1) Section 204's requirements will be waived for Subject Vehicles manufactured during the waiver period between December 20, 2016 and August 20, 2018. There will be no retroactive compliance requirements to retrofit Subject Vehicles manufactured during the waiver period.
- (2) Upon expiration of the waiver, all Subject Vehicles will be manufactured in compliance with the Act, with each RES system providing the required accessibility technology.

For example, the Pilot's production cycle will far exceed the 20-month waiver period requested.

Under the requested limited waiver, Pilots manufactured during the 20-month period will not be subject to the Act's requirements, and will require no retroactive adjustments at the expiration of the waiver. Pilots manufactured after August 20, 2018 (the expiration of the waiver period) will be subject to, and achieve full compliance with, Section 204's functionality requirements.

These waivers are in the public interest because they will allow Honda to integrate upgraded technology and begin manufacturing vehicles that achieve full Section 204 functionality by the expiration of the 20-month waiver's term.

## II. Standard for Granting a Waiver Under 47 C.F.R. 1.3: "Good Cause"

Under 47 C.F.R. 1.3, "[t]he provisions of this chapter [on the Federal Communications Commission] may be suspended, revoked, amended, or waived for *good cause* shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative

Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if *good cause* therefor is shown.” (emphasis added).

The Commission has broad discretion in evaluating whether a petitioner has shown “good cause.” The most often articulated description of the breadth of the Commission’s discretion states that “[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.” *Hill v. FCC*, 496 F.App’x 396, 403 (5th Cir.2012) (citing *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166, (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159, 135 U.S. App. D.C. 317 (D.C. Cir. 1969))). Additionally, the “FCC has an obligation to seek out the ‘public interest’ in particular matters and individualized situations.” *P & R Temmer v. FCC*, 240 U.S. App. D.C. 74, 743 F.2d 918, 929 (1984). The Commission’s “discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” *Keller Communs. v. FCC*, 327 U.S.App.D.C. 280, 130 F.3d 1073, 1076 (1997) (citing *WAIT Radio*, 418 F.2d at 1157).

The FCC’s discretion is only limited in that “[s]ound administrative procedure contemplates waivers, or exceptions granted only pursuant to ... an appropriate general standard,” which is “expressed at least in decisions accompanied by published opinions.” *WAIT Radio*, 418 F.2d at 1159. This means that “applications for a waiver of the FCC’s rules must be given a ‘hard look.’” *P & R Temmer*, 743 F.2d at 929. Therefore, “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain [1] why deviation better serves the public interest and

[2] articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation.” *Ne. Cellular Tel. Co.*, 897 F.2d at 1166.

### **III. The Requirements of Section 204 of the Act**

Section 204 of the Act requires:

“digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired[.]” 47 U.S.C. 303(aa)(1).

The Act also provides:

“that if on-screen text menus or other visual indicators built in to the digital apparatus are used to access the functions ... such functions shall be accompanied by audio output that is either integrated or peripheral to the apparatus, so that such menus or indicators are accessible to and usable by individuals who are blind or visually impaired in real-time[.]” 47 U.S.C. 303(aa)(2).

The FCC’s relevant rule requires:

“[a] manufacturer of digital apparatus manufactured in or imported for use in the United States and designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, must ensure that digital apparatus be designed, developed, and fabricated so that control of appropriate built-in functions included in the digital apparatus are accessible to and usable by individuals who are blind or visually impaired[.]” 47 C.F.R. 79.107 (a)(1).

The definition of “digital apparatus” provides:

“[t]he term digital apparatus as used in this section includes the physical device and the video player(s) capable of displaying video programming transmitted in digital format simultaneously with sound that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming in digital format transmitted simultaneously with sound that manufacturers direct consumers to install after sale[.]” 47 C.F.R. 79.107, Note 1 to paragraph (a)(1).

The effective date of this rule is December 20, 2016. *See* 47 C.F.R. 79.107(b).

The Subject Vehicles offer trim lines with a factory installed RES. Currently on sale versions of RES look and function like a DVD and Blu Ray player. Future versions of RES soon to be offered to consumers will have increased functionality related to video content. Based on these capabilities, the RES may be considered by the FCC as a “digital apparatus” that must be “accessible to and usable by individuals who are blind or visually impaired.” *See* 47 C.F.R. 79.107 (a)(1).

#### **IV. There is “Good Cause” for the Requested Waiver**

##### **A. Honda Has “Good Cause” for Not Providing RES with Full Section 204 Functionality by December 20, 2016**

It was not immediately apparent to Honda that an FCC regulation for manufacturers of digital apparatus might impose compliance requirements on the automotive industry. Also, based on the fact that accessibility features for aiding the visually impaired were not discovered during benchmark testing of competitor vehicles, the need to integrate features to achieve full Section 204 functionality apparently were not recognized by automotive Tier 1 RES suppliers either. It was only upon recent conversation with a vendor and outside counsel that Honda realized the RES may be covered under Section 204 of the Act.

Out of an abundance of caution, Honda immediately began investigating how the operating system in the Subject Vehicles would have to be altered to accommodate this regulation. The operating system and hardware must be frozen far in advance of the start of production of any model to allow for rigorous testing and validation of functionality and stability. The required technology designed to assist the visually impaired also presents challenges of its own. Honda would need to fully analyze and countermeasure playback problems, audio feedback overlap, and pop noise caused when the amplifier is turned on during playback for features not originally considered during development. Additionally, the current

hardware, *e.g.* printed circuit board, would not contain the necessary computing power and memory storage for full functionality, which has packaging ramifications. Unfortunately, the fix is not as simple as adding audio files; the entire operating system and hardware components must be significantly altered or replaced to accommodate this additional technology.

Due to these challenges, Honda cannot provide vehicles already slated for production with full Section 204 functionality without completely halting production. The electronics of the operating system require it to be completely redesigned to accommodate the necessary technology, which is itself a challenging technology to work with. Honda has been actively attempting, since discovery of the Act's potential applicability, to integrate the necessary technology; however, it has and continues to face difficulty implementing the features that would achieve this result. It is for these reasons that Honda respectfully seeks this limited waiver.

**B. Granting the Waiver is in the “Public Interest”**

Honda is a leader in its class in fuel efficiency and safety features. Should Honda suspend production and sales of its vehicles, it would lead to a class of less fuel efficient and less safe options available to consumers in the marketplace. Additionally, Honda is a major employer in Alabama and Ohio where these vehicles are manufactured. Any halt in production could require temporary layoffs or furloughs affecting all of these employees. Even a temporary suspension of production would negatively affect Honda's overall sales and market share, which would have long term negative financial consequences to Honda that could jeopardize jobs across the United States.

Additionally, the RES can still be fully operated by the driver for the enjoyment of passengers even though the RES functionality does not provide the access sought by the Act and implementing rules. This means that the driver can operate the system from the front of the



vehicle such that the passengers in the rear, including visually impaired passengers, can still enjoy at least some of the benefits of the RES system. If Honda stopped production of these vehicles, then all passengers, visually impaired or not, would completely lose the benefit of the entertainment system. Further, if a RES system were not offered to consumers, it would invite them to bring transient, hand-held DVD players into the vehicle, objects that were not designed with the automotive environment in mind and thus are more likely to result in harm to vehicle occupants during a crash. Therefore, granting the limited waiver benefits the public, including its visually impaired members, by maximizing the benefits accessible to them during the waiver period.

**C. Honda’s “Special Circumstances” Merit Granting of the Waiver**

Honda fully appreciates the acute need to extend functionality of the RES to visually impaired passengers. To that end, Honda has been attempting to integrate the necessary technology since discovering that the Act may place requirements on the automotive industry. But special circumstances surrounding the production schedules of the automotive industry merit granting the requested waivers.

The MY 2017 Honda Odyssey is at the end of its six-year production cycle after being launched as a 2012 model. It is not feasible for Honda to implement changes at this point in the production process, as the operating systems of the last few vehicles produced would have to be completely redesigned, which would require shutting down production of the 2017 model completely. Because the MY 2017 Honda Odyssey will cease production in early 2017 when production of the MY 2018 Odyssey begins around April, this timeline presents adequate “special circumstances” meriting a waiver of the Act’s requirements in Section 204.



The MY 2018 Honda Odyssey is slated to begin production in March or April of 2017. Development on the RES for that vehicle began in mid-2013, before the Commission's Final Rule was published on December 20, 2013. As described below, Honda currently does not know whether the hardware is capable of supporting the functionality Section 204 prescribes; regardless, extensive software programming, validation, and stability testing needs to be executed.

Because Honda is not yet capable of integrating the necessary technology into the RES, Honda's realistic timeline for such capability extends past the scheduled beginning of production for the MY 2018 Honda Odyssey. This model will begin production in March or April of 2017, approximately 14 months before Honda will have the capability to fully integrate Section 204 functionality. Therefore, Honda believes these are "special circumstances" that merit granting a temporary waiver for this portion of the 2018 Odyssey production.

The MY 2017 Honda Pilot is currently in year two of its production cycle. Development for the RES on the Pilot began Fall 2012 for launch as a new MY 2015, also before Commission's Final Rule was published. The RES in the Pilot has not changed since its launch. According to the supplier that Honda worked with during development, the hardware and software for the RES are incapable of supporting Section 204 functionality.

The MY 2017 Acura MDX is currently in year three of its production cycle. Development for the RES on the MDX began in early 2009 for launch as a new MY 2013 vehicle, before Commission's Final Rule was published. Except for some graphics changes, the hardware and operating system have not changed since its launch. The supplier that Honda worked with during development of the MY 2013 MDX has not provided information whether the hardware or software can currently support Section 204 functionality, but Honda believes it

is highly unlikely when considering the current status of Pilot and Odyssey. Further, Honda is in discussion with the supplier to determine if the current system achieves full Section 204 functionality without adopting the same solution as is being investigated for MY 2018 Honda Pilot and MY 2018 Honda Odyssey. A cooperative supplier aligned with Honda's proposed solution is critical in implementing any hardware or software changes, and Honda is working hard to achieve, but cannot guarantee, this result.

Because Honda is not yet capable of integrating any necessary technology into the RES for MY 2017 vehicles currently in production, Honda's realistic timeline for such capability extends past the scheduled beginning of production for the MY 2018 and possibly into MY 2019 vehicles. Therefore, Honda believes these are "special circumstances" that merit granting a temporary 20-month waiver. Upon expiration of the waiver period, Honda will be able to produce vehicles that meet, to the extent feasible (as determined under the Act), Section 204's functionality requirements for the rest of their production cycles.

**V. Honda's Detailed Plan for Implementing Section 204 Functionality During the Requested Waiver Period**

As stated above, Honda cannot implement full Section 204 functionality into the MY 2017 Subject Vehicles for technological, financial, and production scheduling reasons. Therefore, for purposes of this section the term "Compatible Subject Vehicles" will be used to identify the MY 2018 Honda Odyssey, MY 2018-2019 Honda Pilot and MY 2018-2019 Acura MDX.

Honda believes that it can achieve Section 204 functionality for the Compatible Subject Vehicles by August 20, 2018 under a 20-month waiver, described above. During the 20 months, Honda has detailed plans to achieve functionality for the Compatible Subject Vehicles. Although the exact timing for each of the Compatible Subject Vehicles is subject to its own unique

considerations and obstacles, Honda provides the following estimate for implementation to aid the Commission in evaluating the reasonableness of the requested waiver period.

<b>Approximate Time</b>	<b>Implementation Steps</b>
2-5 months	Hardware design investigation (it is assumed that additional memory chips and microprocessors, and associated artwork changes, of the board will be required relating to output of speech files to headphones)
2-5 months	Order components and assemble parts by supplier
1.5-3.5 months	Vehicle testing, including retesting of hand-modified unit
1.5-3.5 months	Tooled build of final parts
1.5-3.5 months	Final confirmation on vehicle
1.5-3.5 months	Specification investigation and fixing
1-2 months	Receive speech files and confirm correct implementation
1.5-3.5 months	Software development and fix any software bugs
2-5 months	Supplier parts to be built and shipment to the factory
Total: 20 months (intermediate case)	Ability to produce vehicles in complete compliance

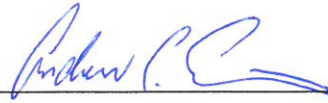
Additionally, Honda is actively experimenting with alternative methods of integrating any necessary technology. Honda will incorporate the lessons learned regarding this plan into other models currently under development, such that all future Honda and Acura vehicles launched after the expiration of the waiver will achieve Section 204 functionality. Finally, Honda is willing to submit status reports to the Commission throughout the 20 months for which the waiver is effective, keeping the Commission informed of the progress Honda is making.

## **VI. Conclusion**

Honda has established “good cause” as required by 47 C.F.R. 1.3 for its request for a limited 20-month waiver for the Subject Vehicles manufactured during the waiver period. Honda has shown that granting the waiver is in the public interest and that the waiver is warranted by special circumstances surrounding the automobile production cycles. *See Ne. Cellular Tel. Co.*, 897 F.2d at 1166. Therefore, Honda respectfully requests that the Commission grant the requested waiver.

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Respectfully submitted,



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